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**ASSISTANT ATTORNEY GENERAL R. HEWITT PATE PROMOTES MERGER
PROCESS REFORM AT INTERNATIONAL COMPETITION NETWORK
CONFERENCE IN MERIDA, MEXICO**

WASHINGTON, D.C. – R. Hewitt Pate, Assistant Attorney General in charge of the Justice Department's Antitrust Division, worked with senior antitrust officials from roughly 50 jurisdictions to advance reforms in multijurisdictional merger review, to promote competition law enforcement in developing countries, and to encourage effective competition advocacy efforts, at the second annual International Competition Network (ICN) Conference in Merida, Mexico on June 23-25, 2003. Representatives of antitrust agencies were joined by approximately 60 non-governmental advisors, including representatives of international organizations, antitrust practitioners, economists, representatives of industry and consumer associations, and members of the academic community.

The ICN was launched in October 2001 by the Department of Justice, the Federal Trade Commission, and 13 foreign antitrust agencies to provide a venue where senior antitrust officials from developed and developing countries work to reach consensus on proposals for procedural and substantive convergence in antitrust enforcement.

The conference focused on the recent work of three ICN working groups: the Merger Review Working Group, the Advocacy Working Group, and the Capacity Building and Competition Policy Implementation Working Group.

"The Recommended Practices for merger notification procedures are examples of the ICN at its best – member agencies focused on specific common objectives to improve enforcement agencies' merger review processes and reduce unnecessary burdens on merging parties," said Pate. "Adoption of these practices, based upon sound antitrust enforcement ideals, are important steps toward streamlining multijurisdictional merger review, and global antitrust convergence generally."

After reviewing the work of the Merger Review Working Group, which is chaired by Deputy Assistant Attorney General Deborah P. Majoras, ICN members adopted four new Recommended Practices for merger notification procedures, recognizing the objectives of reasonable review periods, limited notification requirements, transparency in enforcement, and the periodic review of merger control procedures. The ICN also adopted Recommended Practices endorsed at the first annual ICN conference last year covering jurisdictional nexus, the development of objective and understandable merger notification thresholds, and appropriate

flexibility in the timing of merger notifications. More specifically, the new Recommended Practices provide:

- *Review Periods.* Recognizing the time sensitivity of merger transactions, one Recommended Practice provides that merger reviews should be completed within a reasonable time period. In order to avoid uncertainty, the recommended practices call for specified periods for initial waiting periods or reviews and a determinable time frame for extended waiting periods or reviews.
- *Initial Notification Requirements.* Another Recommended Practice provides that initial notification requirements be limited to information necessary to initiate the merger review process. For transactions that do not pose material competitive concerns, notification requirements should avoid unnecessary burdens and consider flexibility in the initial review. Competition authorities should consider providing an opportunity for pre-notification guidance on notification. Finally, jurisdictions should limit translation requirements for notifications.
- *Transparency.* For greater predictability and fairness, the Recommended Practices also provide that merger control laws be applied transparently. Specifically, the Recommended Practices identify the jurisdictional scope of the merger law, the competition agency's decision-making procedures, and the criteria the competition agency uses for review.
- *Review of Merger Control Provisions.* Finally, a new Recommended Practice provides that jurisdictions should periodically review their merger control provisions to seek improvements in the review process. Specifically, to promote international cooperation and eliminate unnecessary transaction costs due to multi-jurisdictional reviews, jurisdictions should consider reforms in line with recognized best practices.

All seven Recommended Practices are non-binding and governments will implement them voluntarily, as appropriate. The Merger Review Working Group also presented several detailed papers focused on improving investigative techniques and merger guidelines issues.

Antitrust officials at the conference also discussed efforts to assist new antitrust agencies in developing economies. Members reviewed a comprehensive report by an ICN Working Group on the relevance of competition law enforcement in developing and transition economies, the challenges of establishing a culture of competition in such economies, and experiences in effective technical assistance.

The Competition Advocacy Working Group brought its work to a conclusion with discussions of how competition advocacy efforts can promote procompetitive outcomes across other areas of government. Discussions centered around three reports focused on model advocacy provisions in member jurisdictions, advocacy efforts in specific sectors, and practical advocacy techniques.

In addition to evaluating ongoing work in multijurisdictional merger review, capacity building, and competition advocacy, the ICN established a new working group on the role of competition enforcement in regulated sectors, and has agreed to explore the potential for work on the topic of cartel enforcement. This will contribute to the ICN's important mission of assisting member agencies in providing more effective antitrust enforcement on behalf of the consumers they serve.

All ICN documents are available at [_www.internationalcompetitionnetwork.org](http://www.internationalcompetitionnetwork.org).

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